

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance.

Pursuant to 37 CFR 1.136(a), Applicants petition the Assistant Commissioner to extend the time period to file a response to the outstanding Office Action by two months, i.e., up to and including April 29, 2003. A check for \$410.00 is enclosed to cover the cost of this petition. Should any additional fee be required, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment to Deposit Account No. 50-0320.

Claims 40-54 are pending. Claims 26-39 are cancelled, and new claims 40-54 are added, without prejudice.

The amendments and remarks made herein are not made for reasons related to patentability and, thus, do not prevent the application of the doctrine of equivalents. Support for the new claims is found throughout the specification and from the cancelled claims. More specifically, support for the new claims is found in the specification on page 3, the Examples and Figure 1.

No new matter has been added.

The proposed drawing correction was disapproved of by the Examiner as allegedly introducing new matter. Applicants disagree. No new matter was introduced by the addition of proposed Figure 2 as the specification manifestly supports the proposed figure for the reasons of record. However, in order to advance prosecution, Applicants withdraw the proposed drawing correction, without prejudice.

Claims 26-39 were rejected under 35 U.S.C. §112, first paragraph, as allegedly containing

subject matter which was not described in the specification in a manner to reasonably convey that Applicants had possession of the invention. The rejection is traversed.

The cancellation of claim 26-39, without prejudice, has rendered the rejection moot.

Further, Applicants clearly have possession of new claims 40-54. To this end, the Examiner is respectfully reminded of the state of the law in *In re Herschler*, 591 F. 2d 693, 700 (C.C.P.A. 1979), where the predecessor court to the Federal Circuit explained that:

The function of the description requirement is to ensure that the inventor had possession of, as of the filing date of the application relied upon, the specific subject matter later claimed by him; how the specification accomplishes this is not material. The claimed subject matter need not be described *In haec verba* to satisfy the description requirement. It is not necessary that the application describe the claim limitations exactly, but only so clearly that one having ordinary skill in the pertinent art would recognize from the disclosure that appellants invented processes including those limitations.

In re Herschler, 591 F. 2d 693, 700 (C.C.P.A. 1979) (internal citations omitted).

Thus, applying the law to the instant facts, Applicants believe that the instant specification and figure contain sufficient information to make a skilled artisan appreciate that Applicants had possession of the claimed invention at the time of filing. For example, Examples 1 and 2, as well as Figure 1, described the instantly claimed invention. Further, Figure 1 discloses that the claimed device may comprise at least two layers, of which one layer is a matrix layer and the other layer is a support layer. It can also be seen in Figure 1 that the claimed device comprises additional layers, such as a pressure-sensitive adhesive layer and a release liner. Therefore, possession of the claimed invention clearly exists.

Consequently, reconsideration and withdrawal of the Section 112, first paragraph, rejection are respectfully requested.

Thus, favorable consideration of claims 40-54 is earnestly solicited. If, however, there is still an outstanding issue, the Examiner is invited to contact the undersigned for its prompt resolution.

Respectfully submitted,

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